

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

XAVIER MARTINEZ-REYES, #16773-078     §

VS.   §                     CIVIL ACTION NO. 4:10cv399  
CRIMINAL ACTION NO. 4:09cr146(1)

UNITED STATES OF AMERICA                     §

ORDER

Movant filed the above-styled and numbered *pro se* motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255, asserting his counsel was ineffective. United States Magistrate Judge Don D. Bush issued a Report and Recommendation recommending that Movant be allowed an out-of-time appeal based on Movant's assertion that his attorney failed to file an appeal after Movant requested that he do so. No objections were filed.

The court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the same as the findings and conclusions of the court. It is therefore

**ORDERED** that Movant be allowed to file an out-of-time appeal and that his motion to vacate, set aside or correct sentence is **DISMISSED** without prejudice. It is also

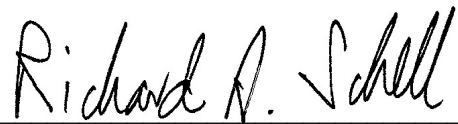
**ORDERED** that the Clerk shall reinstate the judgment of conviction in Movant's criminal case on the docket of that cause. In other words, the Clerk shall re-enter the original judgment of conviction in the criminal case, as of the date of entry of the final judgment in this § 2255 proceeding. **Movant shall have ten days from the date of reinstatement of the judgment of**

conviction in which to file a notice of appeal or motion under Rule 4(b)(4), Fed. R. App. P.

Finally, it is

**ORDERED** that all motions by either party not previously ruled on are hereby **DENIED**.

**SIGNED this the 2nd day of September, 2013.**

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive style with a large, stylized "R" and "S".

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RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE